

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: ETHICON PHYSIOMESH : MDL DOCKET NO. 2782
FLEXIBLE COMPOSITE : CIVIL ACTION NO.
HERNIA MESH PRODUCTS : 1:17-MD-02782-RWS
LIABILITY LITIGATION :
:

This document relates to: :

Joyce Allen v. _____ :

Civil Action No.: _____

Ethicon, Inc. and Johnson & Johnson :

SHORT FORM COMPLAINT

Come now the Plaintiff(s) named below, and for their Complaint against the Defendants named below, incorporate the Master Complaint in MDL No. 2782 by reference. Plaintiff(s) further show the court as follows:

1. Plaintiff Implanted with Physiomesb

Joyce Allen

2. Plaintiff's Spouse (if applicable)

N/A

3. Other Plaintiff and capacity (i.e., administrator, executor, guardian, conservator)

N/A

4. State of Residence and Citizenship of each Plaintiff (including any Plaintiff in a representative capacity) at time of filing of Initial Complaint
North Carolina and the United States

5. State of Residence and Citizenship at the Time of Implantation

North Carolina and the United States

6. District Court and Division in which personal jurisdiction and venue would be proper absent direct filing.

United States District Court for the Eastern District of North Carolina

7. Defendants (Check Defendants against whom Complaint is made):

☒ A. Ethicon, Inc.

☒ B. Johnson & Johnson

8. Basis of Jurisdiction

☒ Diversity of Citizenship (28 U.S.C. § 1332(a))

☐ Other: _____

A. Paragraphs in Master Complaint upon which venue and jurisdiction lie:

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B. Other allegations of jurisdiction and venue:

9.

Date(s) Plaintiff was Implanted with Physiomesb (list date of each implant surgery, where applicable, on separate line)	Hospital(s) where Plaintiff was implanted with Physiomesb (include City and State of Hospital)	Implanting Surgeon(s)
03/01/2012	UNC REX Healthcare (Raleigh, North Carolina)	David C. Powell, M.D.

10. Counts in the Master Complaint brought by Plaintiff(s):

- ☒ Count I – Strict Product Liability – Defective Design
- ☒ Count II – Strict Product Liability – Failure to Warn
- ☒ Count III – Strict Product Liability – Manufacturing Defect
- ☒ Count IV – Negligence

- ☒ Count V – Consumer Protection Laws (Please identify applicable State Consumer Protection law(s) and state any additional facts and legal basis for application of State Consumer Protection law(s) in this case)

New Jersey Consumer Fraud Act, Title 56, Chapter 8, *et seq.*

N.C. Gen. Stat. Ann. § Ch. 75.1, *et seq.*

- ☒ Count VI – Gross Negligence
- ☐ Count VII – Loss of Consortium
- ☒ Count VIII – Punitive Damages
- ☒ Count IX – Discovery Rule, Equitable Tolling/Estoppel (Please state any additional facts and legal basis for Discovery Rule and Tolling below)

On July 7, 2015, Plaintiff underwent surgery for recurrent incisional hernia repair. If was not until after this surgery, at the very earliest, that Plaintiff's injury was apparent or could have reasonable become apparent. In addition, Plaintiff did not and by the exercise of reasonable diligence could not have known that she suffered from an apparent or actionable injury, or the causal connection between her injuries and the wrongful conduct at issue until she first saw attorney advertising on or about February 2017, at the very earliest. However, even at that time, Plaintiff did not have sufficient information to reasonably be expected to know of Defendants' wrongful conduct, in part, due to the fact that Defendants have withheld and continue to withhold the facts necessary for one's awareness of a cause of action. Defendants' misconduct and fraudulent concealment of the relevant facts deprived Plaintiff and her physicians of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Because Plaintiff relied on Defendants' misrepresentations and omissions, she could not reasonably have known, or become aware of facts, that would lead a reasonably prudent person to make an inquiry to discover Defendants' tortious conduct. Defendants' misconduct and fraudulent concealment of the relevant facts tolls any relevant statute of limitations. Even still, Plaintiff's suit is filed well within the applicable statutory period of

limitations. Plaintiff further incorporates all allegations in the Master Complaint, including those related to Defendants' fraudulent concealment and equitable tolling.

☐ Other Count(s) (Please state factual and legal basis for other claims not included in the Master Complaint below):

☒ Jury Trial is Demanded as to All Counts

☐ Jury Trial is NOT Demanded as to Any Count

/s/ Justin A. Browne

/s/ Robert K. Jenner

Attorney(s) for Plaintiff

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